IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

MFA.No. 183 of 2002()

WCC.319/1994 of W.C.C.,KOZHIKODE

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APPELLANT: OPPOSITE PARTY:

THE MANAGING PARTNER, AI-BASHEER,
IMPORTERS AND EXPORTERS, GENERAL MERCHANTS AND
COMMISSION AGENTS, 15/1960, SOUTH BEACH ROAD,
CALICUT-673 001.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS: APPELICANT:

SUDHEESAN, S/O. BALAKRISHNAN,
PILAKKAL HOUSE, BEYPORE.

BY ADV. SRI.C.P.MOHAMMED NIAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA.No. 183 of 2002()

ORDER IN C.M.P NO. 935 OF 2002 IN M.F.A 183 OF 2002

DISMISSED

19.9.2007 SD/- K.PADMANABHAN NAIR, JUDGE

K.PADMANABHAN NAIR, J.

M.F.A No. 183 of 2002

Dated this the 19th day of September 2007

JUDGMENT

The Opposite party in WCC 319/1994 who was the employer, is the appellant.

2. The respondent was a carpenter. He filed a petition claiming compensation against the appellant alleging that he sustained employment injury on 17-5-1994. It was averred that while he was sawing wooden reapers with the help of electricity run iron saw his right palm got trapped into the sawing blade which resulted in total amputation of right middle finger. The appellant contested the matter. He denied the averment that the respondent was his workman. The quantum of compensation was also disputed. The Workmen's Compensation Court after analysing the evidence, found that the respondent was the workman of the appellant. The appellant was directed to pay a compensation of Rs. 22,662/- with interest at the rate of 6% from the date of accident. Challenging that order this appeal is filed

3. The main contention raised in the appeal that the respondent was not the workman of the appellant. The appellant gave oral evidence and produced Exts. R1 to R3. The evidence of RW1 shows that the

appellant is maintaining only the registers in respect of the regular employees and not in respect of the casual employees. The Workmen's Compensation Court which had an occasion to watch the demeanour of the witnesses, found that the respondent was a casual employee of the appellant and I am of the view that, that finding of fact cannot be interfered in this appeal. Ext.A2 certificate is the disability certificate issued from the Department of Orthopaedics Medical College Hospital, Kozhikode. The Workmen's Compensation Court after considering the evidences found that the respondent was having 23% loss of earning capacity The Workmen's Compensation Court awarded an amount of Rs. 22,662/-as compensation,but it awarded interest at the rate of 6% from the date of accident. In view of the principle laid down in **National Insurance Co. Ltd Vs. Mubasir Ahamed(2007 AIR SCW 1265)** the respondent is entitled to get interest only from the date on which compensation due, and not from the date of accident . So the interest accrue only after the appellant did not deposit the amount within one month from the date of passing of the order.

4. In the result, the appeal is disposed of in the following manner: The finding of the Workmen's Compensation Court that the appellant was

a workman of the appellant and he is entitled to get a compensation of Rs. 22,662/- is confirmed. But it is made clear that the starting point for calculation of interest is, on completion from one month of the compensation become due, and not from the date of accident. That is to say, one month from the date of the order passed by the Commissioner for Workmen's Compensation Court.

additionally dictated.

The Commissioner for workmen's Compensation has awarded an amount of Rs. 22,662/- taking the disability of the respondent as 23% The learned counsel for the appellant submits that the injury sustained by the respondent was a scheduled injury and hence the Commissioner went wrong in fixing the percentage. Since it is a scheduled injury, Ext.A2 is the disability Certificate issued by Department of Orthopaedicts, Medical College Hospital Kozhikode. reveals that the Doctor was assessed his temporary functional disability as , *100% disability from 17-5-1994 to 3-8-1994. and 75% temporary disability thereafter for a period of about one month.*

The relevant portion of the Ext.A2 disability reads as follows:

> *At present, all his finger wounds are well healed. His (R) thumb (R) little finger are fully functional. Of the MP jts of the three remaining fingers are fully mobile. His amputated (R) middle finger stump is painfree. The IP jts of (R)index and ring fingers are quite stiff with nearring on both digits and with substance loss over the volar aspect of P2 Index finger.*

He has been put on physiotherapy for mobilisation of the stiff IP Jts.

So in addition to the middle finger Ext.A2 shows that the respondent sustained injuries to two other fingers also. So the disability in respect of those two fingers is calculated as 3%. and added to the 12%. the total disability the total disability will come to 15%. and the compensation payable to the respondent will come to Rs. 14,779.50 which is rounded to 14,780/- This amount will carry interest at the rate of 6%.

K.PADMANABHAN NAIR,JUDGE

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